



Comptroller General
of the United States

Washington, D.C. 20548

G. Ruppert

Decision

Matter of: Neil Gardis & Associates, Inc.

File: B-238672

Date: June 25, 1990

Neil Gardis, Gardis & Associates, Inc., for the protester. Sharon K. Matsumura, Esq., Department of the Navy, for the agency. George Ruppert, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation for indefinite quantity repair to firing ranges subjects contractor to unreasonable risk due to requirement for aggregate pricing for several ranges, rather than separate prices for each range, is denied where, although estimate of work to be ordered on all ranges is considered reasonably accurate, quantities for each individual range are impossible to estimate due to unpredictability of range use; without accurate estimates, individual range prices would not permit an accurate determination of which bid ultimately would result in the lowest cost to the government.

DECISION

Neil Gardis & Associates, Inc., the incumbent contractor, protests any award under invitation for bids (IFB) No. N68711-90-B-1086, issued by the Navy for an indefinite quantity contract to repair firing ranges at the Marine Corps Base, Camp Pendleton, California. Gardis maintains that the IFB is defective because it unjustifiably imposes unnecessary risk on the contractor and thus unduly restricts competition.

We deny the protest.

The IFB called for repair (excavation and removal of spent ammunition) of the impact areas of several rifle and pistol ranges and requested bids on a price per cubic yard basis. The work was divided into three line items covering eight

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(item 0001), two (item 0002) and six (item 0003) ranges. Each line item specified a maximum quantity in terms of total cubic yards for all ranges under the item (11,000, 2,300 and 8,700 yards, respectively), and requested a unit and extended price; the three extended prices then were to be added for a single total price.

Gardis timely protested the structure of the IFB before bid opening, but the Navy proceeded with the opening as scheduled and received 11 bids. The low bid was \$238,530. Gardis submitted the fourth low bid of \$291,650.

Gardis contends that the IFB exposes the contractor to unwarranted risk, and likely will not result in the lowest cost to the government, due to the failure to allow bids for each different range. Gardis explains in this regard that the work at some ranges is more difficult than at others--and thus is more costly to perform--due to such factors as accessibility and terrain. This being the case, Gardis continues, if, in order to be competitive, a bidder averaged its true costs for the different ranges to arrive at a single aggregate price, it would be subjecting itself to the risk that the government would elect to order work only on the most expensive ranges during the performance period; on the other hand, if the government ordered more work on the inexpensive ranges, the government would end up paying a higher price than necessary. Gardis concludes that the IFB should be canceled and revised to permit prices for each range.

A solicitation is not defective merely because it may put contractors at risk in terms of, for example, the possibility that payments under the contract will not cover the cost of performance. S.P.I.R.I.T. Specialist Unlimited, Inc., B-237114.2, Mar. 8, 1990, 90-1 CPD ¶ 257. There is some amount of risk inherent in any procurement, and offerors are expected to use their professional expertise and business judgment in taking these risks into account in computing their offers. Agencies may decide to impose reasonable risks on contractors in order to limit the burdens on the government. Id.; KCA Corp., B-236260, Nov. 27, 1989, 89-2 CPD ¶ 498.

We find that the risk imposed on the contractor under the IFB's bidding scheme is reasonable under the circumstances.

While the Navy's statement of its reason for requiring aggregate pricing is somewhat confusing, in the final analysis it is based on the Navy's position that the IFB estimates for the individual ranges could not be formulated reasonably to reflect the amount of work likely to be


ordered on each of the ranges. This is because use of the firing ranges apparently is not scheduled in advance, so that it is not possible to predict with any reasonable certainty how many days during the contract period a particular range can be taken out of service so the repair work can be done. Also, the amount of work required on a particular range is directly related to the amount of use for which the range is scheduled--again, something which the Navy contends it cannot predict with any certainty. As a result, notwithstanding the informational estimates in the IFB for each range, it in fact might not be possible to schedule any work on certain ranges, in which case the Navy would schedule additional work, up to the stated maximums (in which the agency apparently has reasonable confidence), on the remaining ranges.

Without reasonably accurate estimates for the individual ranges, evaluation and award based on separate prices for the ranges would provide no assurance that the evaluated low bid would have any relation to the cost of the work as ultimately ordered. If, as might be expected, different bidders were low on different ranges, the low evaluated bid would vary, depending solely upon how much work ultimately would be ordered on each of those different ranges.

Aggregate pricing eliminates the uncertainties inherent in separate range pricing due to the Navy's ability to formulate more accurate aggregate estimates. Evaluation of aggregate prices based on these aggregate quantities will provide a firm basis for comparing the bids and determining which will be the lowest based on actual performance, even if the quantities ultimately vary substantially from the IFB's individual range estimates.

Although requiring aggregate pricing in this case may well impose certain risks on both the contractor and the government, it also assures prospectively that the evaluated low bid will result in the lowest cost to the government among the bids received. As indicated above, bidders generally are expected to alleviate any perceived risk by building such considerations into their bid prices. KCA Corp., B-236260, supra. The fact that 10 bids other than Gardis' were received indicates that other firms did so.

The protest is denied.


for James F. Hinchman
General Counsel